

Adopted	Rejected
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COMMITTEE REPORT

YES:	10
NO:	0

MR. SPEAKER:

*Your Committee on Rules and Legislative Procedures, to which was referred Senate Bill 232, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 2, between lines 30 and 31, begin a new paragraph and insert:
- 2 "SECTION 4. IC 36-4-3-5, AS AMENDED BY P.L.224-2001,
- 3 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2003]: Sec. 5. (a) If the owners of land located outside of but
- 5 contiguous to a municipality want to have territory containing that land
- 6 annexed to the municipality, they may file with the legislative body of
- 7 the municipality a petition:
- 8 (1) signed by at least:
- 9 (A) fifty-one percent (51%) of the owners of land in the
- 10 territory sought to be annexed; or
- 11 (B) the owners of seventy-five percent (75%) of the total
- 12 assessed value of the land for property tax purposes; and
- 13 (2) requesting an ordinance annexing the area described in the
- 14 petition.

(b) The petition circulated by the landowners must include on each page where signatures are affixed a heading that is substantially similar to the following:

"PETITION FOR ANNEXATION INTO THE (insert whether city or town) OF (insert name of city or town).".

(c) Except as provided in section 5.1 of this chapter, if the legislative body fails to pass the ordinance within one hundred fifty (150) days after the date of filing of a petition under subsection (a), the petitioners may file a duplicate copy of the petition in the circuit or superior court of a county in which the territory is located, and shall include a written statement of why the annexation should take place. Notice of the proceedings, in the form of a summons, shall be served on the municipality named in the petition. The municipality is the defendant in the cause and shall appear and answer.

(d) The court shall hear and determine the petition without a jury, and shall order the proposed annexation to take place only if the evidence introduced by the parties establishes that:

- (1) essential municipal services and facilities are not available to the residents of the territory sought to be annexed;
- (2) the municipality is physically and financially able to provide municipal services to the territory sought to be annexed;
- (3) the population density of the territory sought to be annexed is at least three (3) persons per acre; and
- (4) the territory sought to be annexed is contiguous to the municipality.

If the evidence does not establish all four (4) of the preceding factors, the court shall deny the petition and dismiss the proceeding.

(e) This subsection does not apply to a town that has abolished town legislative body districts under IC 36-5-2-4.1. An ordinance adopted under this section must assign the territory annexed by the ordinance to at least one (1) municipal legislative body district.

~~(f) In a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000), the court shall hear and determine the petition without a jury and shall order the proposed annexation to take place only if the evidence introduced by the parties establishes that:~~

- ~~(1) essential city services and facilities are or can be made available to the residents of the territory sought to be annexed;~~

(2) the city is physically and financially able to provide city services to the territory sought to be annexed; and

(3) the territory sought to be annexed is contiguous to the city.

If the evidence does not establish all three (3) of the preceding factors, the court shall deny the petition and dismiss the proceeding.

SECTION 5. IC 36-4-3-11, AS AMENDED BY P.L.224-2001, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. (a) Except as provided in section 5.1(i) of this chapter and subsection (d), whenever territory is annexed by a municipality under this chapter, the annexation may be appealed by filing with the circuit or superior court of a county in which the annexed territory is located a written remonstrance signed by: ~~(1) if the annexation is by a city in a county with a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000): (A) a majority of the owners of land in the annexed territory; or (B) the owners of more than seventy-five percent (75%) in assessed valuation of the land in the annexed territory; or (2) if the annexation is by a municipality that is not described in subdivision (1):~~

~~(A) (1)~~ at least sixty-five percent (65%) of the owners of land in the annexed territory; or

~~(B) (2)~~ the owners of more than seventy-five percent (75%) in assessed valuation of the land in the annexed territory.

The remonstrance must be filed within ninety (90) days after the publication of the annexation ordinance under section 7 of this chapter, must be accompanied by a copy of that ordinance, and must state the reason why the annexation should not take place.

(b) On receipt of the remonstrance, the court shall determine whether the remonstrance has the necessary signatures. In determining the total number of landowners of the annexed territory and whether signers of the remonstrance are landowners, the names appearing on the tax duplicate for that territory constitute prima facie evidence of ownership. Only one (1) person having an interest in each single property, as evidenced by the tax duplicate, is considered a landowner for purposes of this section.

(c) If the court determines that the remonstrance is sufficient, it shall fix a time, within sixty (60) days of its determination, for a hearing on the remonstrance. Notice of the proceedings, in the form of a summons, shall be served on the annexing municipality. The municipality is the

1 defendant in the cause and shall appear and answer.

2 (d) If an annexation is initiated by property owners under section 5.1
3 of this chapter and all property owners within the area to be annexed
4 petition the municipality to be annexed, a remonstrance to the
5 annexation may not be filed under this section.

6 SECTION 6. IC 36-4-3-13, AS AMENDED BY P.L.170-2002,
7 SECTION 144, IS AMENDED TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) Except as provided in
9 ~~subsections~~ **subsection** (e), ~~and (g)~~, at the hearing under section 12 of
10 this chapter, the court shall order a proposed annexation to take place
11 if the following requirements are met:

12 (1) The requirements of either subsection (b) or (c).

13 (2) The requirements of subsection (d).

14 (b) The requirements of this subsection are met if the evidence
15 establishes the following:

16 (1) That the territory sought to be annexed is contiguous to the
17 municipality.

18 (2) One (1) of the following:

19 (A) The resident population density of the territory sought to
20 be annexed is at least three (3) persons per acre.

21 (B) Sixty percent (60%) of the territory is subdivided.

22 (C) The territory is zoned for commercial, business, or
23 industrial uses.

24 (c) The requirements of this subsection are met if the evidence
25 establishes the following:

26 (1) That the territory sought to be annexed is contiguous to the
27 municipality as required by section 1.5 of this chapter, except that
28 at least one-fourth (1/4), instead of one-eighth (1/8), of the
29 aggregate external boundaries of the territory sought to be
30 annexed must coincide with the boundaries of the municipality.

31 (2) That the territory sought to be annexed is needed and can be
32 used by the municipality for its development in the reasonably
33 near future.

34 (d) The requirements of this subsection are met if the evidence
35 establishes that the municipality has developed and adopted a written
36 fiscal plan and has established a definite policy, by resolution of the
37 legislative body as set forth in section 3.1 of this chapter. The fiscal
38 plan must show the following:

(1) The cost estimates of planned services to be furnished to the territory to be annexed. The plan must present itemized estimated costs for each municipal department or agency.

(2) The method or methods of financing the planned services. The plan must explain how specific and detailed expenses will be funded and must indicate the taxes, grants, and other funding to be used.

(3) The plan for the organization and extension of services. The plan must detail the specific services that will be provided and the dates the services will begin.

(4) That planned services of a noncapital nature, including police protection, fire protection, street and road maintenance, and other noncapital services normally provided within the corporate boundaries, will be provided to the annexed territory within one (1) year after the effective date of annexation and that they will be provided in a manner equivalent in standard and scope to those noncapital services provided to areas within the corporate boundaries regardless of similar topography, patterns of land use, and population density.

(5) That services of a capital improvement nature, including street construction, street lighting, sewer facilities, water facilities, and stormwater drainage facilities, will be provided to the annexed territory within three (3) years after the effective date of the annexation in the same manner as those services are provided to areas within the corporate boundaries, regardless of similar topography, patterns of land use, and population density, and in a manner consistent with federal, state, and local laws, procedures, and planning criteria. ~~However, in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000); the fiscal plan of a city must show that these services will be provided to the annexed territory within four (4) years after the effective date of the annexation and in the same manner as those services are provided to areas within the corporate boundaries regardless of similar topography, patterns of land use, or population density.~~

(e) ~~This subsection does not apply to a city located in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000). At the hearing under~~

1 section 12 of this chapter, the court shall do the following:

2 (1) Consider evidence on the conditions listed in subdivision (2).

3 (2) Order a proposed annexation not to take place if the court
4 finds that all of the following conditions exist in the territory
5 proposed to be annexed:

6 (A) The following services are adequately furnished by a
7 provider other than the municipality seeking the annexation:

8 (i) Police and fire protection.

9 (ii) Street and road maintenance.

10 (B) The annexation will have a significant financial impact on
11 the residents or owners of land.

12 (C) The annexation is not in the best interests of the owners of
13 land in the territory proposed to be annexed as set forth in
14 subsection (f).

15 (D) One (1) of the following opposes the annexation:

16 (i) At least sixty-five percent (65%) of the owners of land in
17 the territory proposed to be annexed.

18 (ii) The owners of more than seventy-five percent (75%) in
19 assessed valuation of the land in the territory proposed to be
20 annexed.

21 Evidence of opposition may be expressed by any owner of land
22 in the territory proposed to be annexed.

23 (f) The municipality under subsection (e)(2)(C) bears the burden of
24 proving that the annexation is in the best interests of the owners of land
25 in the territory proposed to be annexed. In determining this issue, the
26 court may consider whether the municipality has extended sewer or
27 water services to the entire territory to be annexed:

28 (1) within the three (3) years preceding the date of the
29 introduction of the annexation ordinance; or

30 (2) under a contract in lieu of annexation entered into under
31 IC 36-4-3-21.

32 The court may not consider the provision of water services as a result
33 of an order by the Indiana utility regulatory commission to constitute
34 the provision of water services to the territory to be annexed.

35 ~~(g) This subsection applies only to cities located in a county having~~
36 ~~a population of more than two hundred thousand (200,000) but less~~
37 ~~than three hundred thousand (300,000). However, this subsection does~~
38 ~~not apply if on April 1, 1993, the entire boundary of the territory that~~

is proposed to be annexed was contiguous to territory that was within the boundaries of one (1) or more municipalities. At the hearing under section 12 of this chapter, the court shall do the following:

(1) Consider evidence on the conditions listed in subdivision (2):

(2) Order a proposed annexation not to take place if the court finds that all of the following conditions exist in the territory proposed to be annexed:

(A) The following services are adequately furnished by a provider other than the municipality seeking the annexation:

(i) Police and fire protection;

(ii) Street and road maintenance;

(B) The annexation will have a significant financial impact on the residents or owners of land;

(C) One (1) of the following opposes the annexation:

(i) A majority of the owners of land in the territory proposed to be annexed;

(ii) The owners of more than seventy-five percent (75%) in assessed valuation of the land in the territory proposed to be annexed;

Evidence of opposition may be expressed by any owner of land in the territory proposed to be annexed:

(h) (g) The most recent:

(1) federal decennial census;

(2) federal special census;

(3) special tabulation; or

(4) corrected population count;

shall be used as evidence of resident population density for purposes of subsection (b)(2)(A), but this evidence may be rebutted by other evidence of population density.

SECTION 7. IC 36-4-3-16, AS AMENDED BY P.L.217-1999, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 16. (a) Within one (1) year after the expiration of:

(1) the one (1) year period for implementation of planned services of a noncapital nature under section 13(d)(4) of this chapter; **or**

(2) the three (3) year period for the implementation of planned services of a capital improvement nature under section 13(d)(5) of this chapter; **or**

(3) the four (4) year period for the implementation of planned

~~services of a capital improvement nature under section 13(d)(5) of this chapter by a city for annexed territory in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000);~~

any person who pays taxes on property located within the annexed territory may file a complaint alleging injury resulting from the failure of the municipality to implement the plan. The complaint must name the municipality as defendant and shall be filed with the circuit or superior court of the county in which the annexed territory is located.

(b) The court shall hear the case within sixty (60) days without a jury. In order to be granted relief, the plaintiff must establish one (1) of the following:

(1) That the municipality has without justification failed to implement the plan required by section 13 of this chapter within the specific time limit for implementation after annexation.

(2) That the municipality has not provided police protection, fire protection, sanitary sewers, and water for human consumption within the specific time limit for implementation, unless one (1) of these services is being provided by a separate taxing district or by a privately owned public utility.

(3) That the annexed territory is not receiving governmental and proprietary services substantially equivalent in standard and scope to the services provided by the municipality to other areas of the municipality, regardless of topography, patterns of land use, and population density similar to the annexed territory.

(c) The court may:

(1) grant an injunction prohibiting the collection of taxes levied by the municipality on the plaintiff's property located in the annexed territory;

(2) award damages to the plaintiff not to exceed one and one-fourth (1 1/4) times the taxes collected by the municipality for the plaintiff's property located in the annexed territory;

(3) order the annexed territory or any part of it to be disannexed from the municipality;

(4) order the municipality to submit a revised fiscal plan for providing the services to the annexed territory within time limits set up by the court; or

(5) grant any other appropriate relief.

1 (d) A change of venue from the county is not permitted for an action
 2 brought under this section.

3 (e) If the court finds for the plaintiff, the defendant shall pay all
 4 court costs and reasonable attorney's fees as approved by the court.

5 (f) The provisions of this chapter that apply to territory disannexed
 6 by other procedures apply to territory disannexed under this section."

7 Page 9, line 4, delete "one" and insert "**two**".

8 Page 9, line 4, after "hundred" insert "**fifty**".

9 Page 9, line 5, delete "(\$100,000)" and insert "**(\$250,000)**".

10 Page 10, line 31, after "district" delete "." and insert "**for a district**
 11 **established under this chapter before July 1, 2003, and seven**
 12 **hundred fifty thousand dollars (\$750,000) per district for a district**
 13 **established under this chapter after June 30, 2003.**".

Renumber all SECTIONS consecutively.

(Reference is to ESB 232 as printed March 28, 2003.)

and when so amended that said bill do pass.

Representative Pelath